

November 19, 1999

D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3-F

Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies.

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I. INTRODUCTION

This arbitration proceeding is held pursuant to the Telecommunications Act of 1996 ("the Act"). On December 4, 1996, the Department of Telecommunications and Energy ("Department") issued an Order in this consolidated arbitration proceeding on future interconnection agreements between New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts ("Bell Atlantic"), the incumbent local exchange carrier ("ILEC"), and the competitive local exchange carriers ("CLECs") . Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3 (1996) ("Phase 3 Order").

The Phase 3 Order addressed performance standards to be met by Bell Atlantic in providing services to the CLECs. Examples of such services include connecting customers to resold services, such as local exchange service, responding to repair calls, and processing of unbundled network elements ("UNEs") orders.⁽¹⁾ In its Phase 3 Order, the Department found that Bell Atlantic should provide services to CLECs at parity with services it provides to itself, and that the level of service Bell Atlantic currently provides to itself should be the minimal level of performance Bell Atlantic is required to provide in the future to CLECs. This standard was termed the "no-change-in-parity" standard. We

also found that two levels of performance should be measured by Bell Atlantic. The first level, "the internal process standard" would ensure that there is parity with regard to Bell Atlantic's internal processes in handling CLEC requests for service.⁽²⁾ The second level, "the retail process standard," would ensure that there is parity in the delivery of service to the retail customer.⁽³⁾ In addition, we found that Bell Atlantic's internal process standard should be based on the level of service Bell Atlantic currently provides to its 100 largest business customers (at the time of the Order) and that Bell Atlantic should compare that service level with the service level offered to CLECs. Phase 3 Order at 20-24. The Phase 3 Order also addressed the remedies that would be available to CLECs if Bell Atlantic fails to meet the established performance standards. We found that performance payments should be available to carriers in the event Bell Atlantic fails to achieve parity. Id. at 26-27.

On September 25, 1998, the Department issued its Phase 3-E Order in which Bell Atlantic was required to comply with a number of directives concerning performance standards for provisioning of services to CLECs. In particular, the Phase 3-E Order modified Bell Atlantic's retail process performance standards. In addition, the Phase 3-E Order addressed performance standards for pre-ordering and ordering of services, and trouble reporting ("internal process performance standards") by CLECs from Bell Atlantic, and required Bell Atlantic to make modifications to those measurements. Bell Atlantic submitted a compliance filing in response to the Phase 3-E Order on November 13, 1998.

A technical session with the Department was held on December 12, 1998, and the parties were directed to engage in discussions to clarify remaining concerns and disagreements about the compliance filing. When these discussions failed to resolve all outstanding issues, the parties were asked to file comments on remaining areas of disagreement. AT&T Communications of New England, Inc. ("AT&T") and MCI WorldCom, Inc. ("MCI WorldCom") did so on February 2, 1999, and Bell Atlantic responded on March 19, 1999. An evidentiary hearing was held by the Department on April 16, 1999, at which the parties were directed to file briefs on any outstanding issues. AT&T was the only party to do so, submitting its brief on May 4, 1999 ("AT&T Brief"). Bell Atlantic responded with reply comments on May 14, 1999 ("Bell Atlantic Reply Comments").

This Order addresses the issues raised by AT&T in its May 4, 1999 brief. Because no other party filed a brief in this matter, the Department will deem comments made in the February 2, 1999 CLEC filings to have been resolved by the informal contacts made between the companies and by the information provided by Bell Atlantic in the evidentiary hearing.

II. DISCUSSION OF ISSUES

A. Notice of Order Jeopardy

A Notice of Order Jeopardy is an indication that Bell Atlantic may not be able to fulfil a CLEC order in a timely fashion. AT&T argues that Bell Atlantic proposed this

measurement in its compliance filing but is unable to report on it. Therefore, says AT&T, an additional performance measure designed to assess the successful completion of "hot cuts"⁽⁴⁾ should be required of Bell Atlantic (AT&T Brief at 2).

Bell Atlantic admits that its compliance filing did include a standard for this item, but it states that it does not have the technical capability to track or measure if a Notice of Order Jeopardy has been sent or received by a CLEC (Tr. 44, at 14-15). Bell Atlantic asserts that a more meaningful measure is one that indicates whether it has met its installation commitment to the CLEC, and states that its "percent missed installation appointments" measurement already tracks Notice of Order Jeopardy⁽⁵⁾ (Bell Atlantic Reply Comments at 2-3).

We accept Bell Atlantic's assertion that it cannot track or measure if a Notice of Order Jeopardy has been received by a CLEC. Bell Atlantic proposed the inclusion of this measurement for Notice of Order Jeopardy to provide CLECs with a general expectation of what to expect. However, without the technical capability to track or measure this measurement, it cannot serve as a reportable item (see Tr. 44, at 14-15). We agree with Bell Atlantic that the more appropriate measurement for a comparison of parity of installation orders for a CLEC and Bell Atlantic is whether Bell Atlantic has met in a timely fashion its installation commitment to the CLEC, and this measurement already exists.

B. Percent Flow-through

AT&T complains that Bell Atlantic has not yet developed a measurement for the percentage of orders that flow through the Bell Atlantic operation support systems ("OSS") without manual intervention, as required by the Department (AT&T Brief at 2). Bell Atlantic reports that its submission of this item has been delayed by OSS testing being undertaken under the auspices of the New York Public Service Commission and that it should be submitted to the Department within a "few weeks" (Tr. 44, at 15-16). We would be inclined to allow Bell Atlantic a few weeks to obtain the information it needs from New York to develop the flow-through measurement. However, those few weeks expired last spring, and the final report by the New York third party OSS tester was issued August 6, 1999, almost three months ago. Therefore, further delay is not warranted, and Bell Atlantic is required to produce this measurement two weeks from the date of this Order.

C. Top One Hundred Customers

AT&T claims that Bell Atlantic has failed to comply with the Department's directive to use data from its top 100 customers to measure the internal process and develop a standard for serving CLECs. AT&T argues that the Department should direct Bell Atlantic to provide credits to CLECs for any service level that is below that provided to this group of customers (AT&T Brief at 3-4).

Bell Atlantic argues that this claim should be rejected. Bell Atlantic explains that it was unable to measure system response time and speed of answer for this group of customers separately from other customers, and, therefore, data from the top 100 customers were not used to measure the internal process performance. Instead, says Bell Atlantic, following discussion with AT&T and other CLECs, Bell Atlantic included results for the top 100 customers as part of its retail process performance standard reports, as indicated in an August 19, 1997 filing (Bell Atlantic Reply Comments at 4-5).

AT&T claims that, although the retail performance information for the top 100 customers is being reported by Bell Atlantic, the reporting is informational only. Instead, says AT&T, the retail performance information for the top 100 customers should serve as the basis for performance credits (AT&T Brief at 3). Bell Atlantic replies that AT&T's proposal is an unwarranted expansion of the no-change-in-parity standard adopted and reviewed by the Department in earlier Phase 3 Orders, where the Department based performance standards on the performance results for all of Bell Atlantic's retail customers, not only the top 100 customers (Bell Atlantic Reply Comments at 5).

In the Phase 3 Order at 24, the Department required Bell Atlantic to base its internal process standards on the level of service Bell Atlantic provides to its 100 largest business customers. Phase 3 Order at 24. Indeed, this is our only explicit mention of this customer group in the series of Phase 3 Orders issued in the Consolidated Arbitrations. In the meantime, we have adopted a number of retail performance measurements under our no-change-in-parity standard. See, for example, Phase 3-B Order (July 29, 1997); Phase 3-E Order (September 25, 1998).

We accept the uncontroverted evidence that the CLECs agreed, for purposes of Massachusetts reporting, that the use of the top 100 customers for the development of the internal process standards would not be possible because of data limitations (see Tr. 44, at 17-19; Exh. BA-PS-1). Instead, Bell Atlantic and the CLECs agreed that data for those customers would be reported at the retail level (see Tr. 44, at 17-19; Exh. BA-PS-1). However, there is no indication that Bell Atlantic agreed to, or that the Department ordered, that this measure be subject to performance payments (see Exh. BA-PS-1, at 3). See also Phase 3-B Order at 34-37. Bell Atlantic correctly notes that we have not changed the terms of performance payments to be made under our no-change-in-parity standard. Accordingly, we will not on this record accept AT&T's proposal to impose performance payments for the difference in retail provisioning performance between the top 100 Bell Atlantic customers and for CLEC customers.

D. Special Services

AT&T asserts that Bell Atlantic is not reporting special services reporting data and should be ordered to do so from October 1998 (when it began performance reporting in Massachusetts), in its next performance report. AT&T further argues that Bell Atlantic should pay any credits due with respect to these data (AT&T Brief at 4).

Bell Atlantic replies that there was some initial difficulty in obtaining this information, but that it has been reporting such data since January 1999 and will pay any appropriate credits following the report for the first quarter of 1999. Bell Atlantic further states that it will attempt to retrieve or recreate data from the last quarter of 1998 and will produce those data if available. Bell Atlantic notes that no action is required by the Department because the performance reports will now include special service provisioning data (Bell Atlantic Reply Comments at 5-6).

As of the date of this Order, Bell Atlantic has provided the first quarter 1999 Special Services performance data. In addition, on November 10, 1999, Bell Atlantic filed its Performance Report for the fourth quarter of 1998. Although it is regrettable that the early data were late, Bell Atlantic has now remedied this situation for the future. No further action is required by the Department.

III. ORDER

Accordingly, after hearing and due consideration, it is

ORDERED: That Bell Atlantic's Performance Standards Compliance Filing dated November 13, 1998 is hereby approved.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. A network element is "a facility or equipment used in the provision of a telecommunications service." 47 U.S.C. § 153 (29). An ILEC such as Bell Atlantic has a duty to provide these network elements on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service . Id. at § 251(c)(3). The term "unbundling" means offering discrete elements of the service to the CLECs. In the Phase 3-B Order, the Department required Bell Atlantic to propose maintenance and provisioning measurements for these unbundled network elements or UNEs.

2. The Department defined the internal process standard as the time it takes for Bell Atlantic staff to begin to act on a request from a Bell Atlantic customer service representative compared with the time it takes for Bell Atlantic staff to begin to act on a similar request from a CLEC customer service representative. Phase 3 Order at 22.

3. The Department defined the retail process standard as the time it takes Bell Atlantic staff to complete a service call for a Bell Atlantic customer compared with the time it takes for Bell Atlantic staff to complete a similar service call for a CLEC customer. Phase 3 Order at 22-23.

4. A "hot cut" refers to the process of Bell Atlantic disconnecting its loop facilities and reconnecting them to a competitor's switches in a coordinated manner.

5. Bell Atlantic responded that AT&T's proposal to add an additional measurement to measure hot cut completion in lieu of a Notice of Jeopardy measurement is a new request and well beyond the scope of this proceeding (Bell Atlantic Reply Comments at 3).